

In the matter of:)	Docket No.
)	
[Site Name])	OPERATION AND MAINTENANCE
[Street Address])	AGREEMENT
[City] , California)	
)	Health and Safety Code
A Hazardous Waste Site)	Sections 25395.80 and 25395.97
)	

This Agreement is made and entered into, by and between the State Department of Toxic Substances Control ("Department") and **[Party]** ("Respondent"). Department and Respondent are collectively the "Parties."

RECITALS;

1.0 Certain operation and maintenance of the **[Type of Remediation System(s), e.g., groundwater treatment system, soil vapor extraction system, cap, etc.]** remain to be performed on the **[Site Name]** ("Site") for the remediation of **[Affected Medium or Media]**. The Site is owned by **[Site Owner Name]**. The Site is located at **[Street Address]** in **[City], [County]**, California. A site location map and the assessor's parcel map are attached as Exhibit A. A site map showing the location(s) of the **[Type of Remediation System, listing important components]** is attached as Exhibit B.

1.1 On **[Effective Date of CLRRA Agreement]**, the Parties entered into an agreement under California's Land Reuse and Revitalization Act (CLRRA, Health and Safety Code sections 25395.60-25395.105), Docket No. **[Docket Number]** (CLRRA Agreement), that provides for an Operation and Maintenance (O&M) agreement (Agreement) as a condition of issuing a certificate of completion if the Department determines that long-term O&M is required.

AGREEMENT

2.0 The Parties, based upon the foregoing and in exchange for the mutual performances and forbearances described below, agree as follows:

2.1 Obligations of **[Respondent]**. The obligations of Respondent are set forth below.

2.2 Continuing Obligations. **[Respondent]** will comply with all conditions of HSC §25395.80 as they become applicable and as they continue to apply. These conditions include (i) exercising appropriate care with respect to releases and threatened releases of hazardous materials at the Site, (ii) providing full cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration at the Site, (iii) complying with land use controls established or relied on in connection with an approved response action at the Site, (iv) not impeding the effectiveness or integrity of any aspect of any remedy employed at the Site in connection with a response action, (v)

complying with all requests for information or administrative subpoenas concerning releases or threatened releases of hazardous materials by any agency with jurisdiction under an applicable statute, and (vi) providing applicable notices and satisfying reporting requirements required by state or federal law with respect to the discovery or release of hazardous materials at the Site.

2.3 Implementation of Operation and Maintenance Plans. Respondent shall implement the Operation and Maintenance Plan (OMP) dated **[Report Date]** (Exhibit C) for the remediation of **[Type of Contaminants]** in **[Affected Medium or Media]** at the Site. The **[Type of Remediation System(s)]** as defined in the OMP shall be left in place and operated by Respondent until and except to the extent that the Department authorizes Respondent in writing to discontinue, move or modify some or all of the groundwater monitoring system because Respondent has met the cleanup objectives for the site, or because the modifications would better achieve the cleanup objectives, or because other cleanup methods will be implemented or because it has been demonstrated that the maximum achievable cleanup has occurred.

2.4 Financial Assurance. Respondent must assure that sufficient monies are available to: implement the activities described in Section 2.2 and 2.3, above; and pay costs as outlined in paragraph 19.0. **[Respondent to select a mechanism and propose language to be inserted into this Agreement that meets the criteria set forth in the regulations for the selected mechanism. Financial assurance mechanisms are outlined in Title 22 of the California Code of Regulations section 66264.140 et seq.]**

2.5 Modifications. Respondent shall give the Department at least sixty (60) days advance written notice prior to the intended date of any proposed modifications, discontinuation or other disruption of the **[Type of Remediation System(s)]**. The written notice shall be sent by certified mail to the Department at the address set out in Paragraph 7.0 of this Agreement. The written notice to the Department shall include a detailed description of the work to be done or modifications to be made and a map showing the exact location of the proposed work and the reasons for modification, disruption or discontinuation.

2.6 Endangerment.

2.6.1 Respondent shall notify In the event of any action or occurrence (such as a fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance) during the course of this Agreement, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the Project Manager. Respondent shall take such action in consultation with the Project Manager and in accordance with all applicable provisions of this Agreement. Within seven days of the onset of such an event, Respondent shall furnish a report to the Department, signed by Respondent's Project Coordinator, setting forth the events which occurred and the measures taken in the response thereto. In the event that Respondent fail to take appropriate response and the Department takes the

action instead, Respondent shall be liable to the Department for all costs of the response action. Nothing in this section shall be deemed to limit any other notification requirement to which the Respondent may be subject.

2.6.2 Respondent shall notify DTSC's Project Manager immediately upon learning of any previously unknown condition that endangers public health or safety or that poses an unreasonable risk to human health and safety or the environment.

2.6.3 In the event DTSC determines that any activity (whether or not pursued in compliance with the Agreement) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, DTSC may order Respondent to stop further implementation of the Agreement for such period of time as may be needed to abate the endangerment.

2.7 Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors and consultants of the Department. Access to laboratories (if owned by Respondent's consultants) used for analyses of samples under this Agreement shall also be provided as outlined above. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that the Department or any other agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytical data, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Agreement; conducting such tests as the Department may deem necessary; and verifying the data to the Department by Respondent. Respondent shall ensure that no conveyance of title, easement or other interest in the property shall be executed (consummated) without incorporating the continued right of entry by the Department.

2.8 Compliance With Applicable Laws. Respondent shall carry out this Agreement in compliance with all applicable local, state, and federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety.

3.0 Obligations of the Department. The Department agrees to review and oversee the measures to be performed by Respondent pursuant to this Agreement.

4.0 Project Coordinator. The responsibilities of the Respondent's Project Coordinator **[Name of Project Coordinator]** will be to receive and submit all notices, comments, approvals, and other communications from and to the Department. Respondent shall promptly notify the Department of any change in the identity of the Project Coordinator.

5.0 Project Engineer. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified professional engineer in the State of California with expertise in hazardous substance site cleanup. Within [5] calendar days from the date this Agreement is signed by the Department, Respondent must submit: a) The name and address of the project engineer chosen by the Respondent; and b) in

order to demonstrate expertise in hazardous substance cleanup, the resume of the engineer, and the statement of qualifications of the consulting firm responsible for the work. Respondent shall promptly notify the Department of any change in the identity of the Project Engineer.

6.0 Quality Control/Quality Assurance (QC/QA). All sampling and analysis conducted by Respondent under this Agreement shall be performed in accordance with QC/QA procedures submitted by Respondent and approved by the Department pursuant to this Agreement.

7.0 Submittals. All submittals and notifications from Respondent that are required by this Agreement shall be sent to:

[Branch Chief], Chief
[Branch]
Attn: **[Project Manager]**
Department of Toxic Substances Control
[Office Address]

For all final reports, Respondent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file Adobe Acrobat version 7.0 or lower or Microsoft Word 2003 formatted file (doc) or lower.

8.0 Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Site Mitigation Branch Chief, Department of Toxic Substances Control, or his/her designee. Confirmation of a designation shall be provided in writing by the Department in order to validate any approvals or decisions made by a Branch Chief's designee. No informal advice, guidance, suggestions or comments by the Department regarding reports, plans, specifications, schedules or any other writings by Respondent shall be construed to relieve Respondent of the obligations to obtain such formal approvals as may be required.

9.0 Department Review and Approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement does not meet the conditions in this Agreement or fails to protect public health or safety or the environment, DTSC will consult with the Respondent and either (1) return comments to the Respondent with recommended changes or (2) modify the document, with Respondent concurrence, as deemed necessary and approve the document as modified.

10.0 Stop Work Order. In the event that the Department determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, the Department may order Respondent to stop

further implementation of this Agreement for such period of time needed to abate the endangerment. In the event that the Department determines that any activities (whether or not pursued in compliance with this Agreement) are proceeding without Department authorization, the Department may order Respondent to stop further implementation of this Agreement or activities for such period of time needed to obtain Department authorization, if such authorization is appropriate. Any deadline in this Agreement directly affected by a Stop Work Order, under this section, shall be extended for the term of the Stop Work Order.

11.0 Department Required Modifications. The Department may require modification, replacement, or additions to the groundwater monitoring system if that system is not achieving cleanup objectives or protecting public health, safety or the environment, including those identified in the Response Plan. The Department may require additional evaluations, designs and the construction and operation of other groundwater monitoring systems to achieve these objectives.

12.0 Respondent Liabilities. Except as provided by CLRRRA, nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current or future operations of Respondent. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site. Nothing in this Agreement is intended or shall be construed to limit or preclude the Department from taking any action authorized under CLRRRA to protect public health or safety or the environment and recovering the cost thereof. Notwithstanding compliance with the terms of this Agreement, Respondent may be required to take further actions as are necessary to protect public health and the environment.

13.0 Sampling, Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring or other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Agreement. Respondent shall submit all such data upon the request of the Department. Respondent shall inform the Department at least seven (7) days in advance of all field sampling under this Agreement, and shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Agreement. Respondent shall maintain a central repository of the data, reports, and other documents prepared pursuant to this Agreement.

14.0 Record Retention. All such data, reports and other documents shall be preserved by Respondent for a minimum of ten (10) years after the conclusion of all activities under this Agreement. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request or deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at

least six (6) months prior to destroying any documents prepared pursuant to this Agreement.

15.0 Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 24.0, Parties Bound, in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Agreement.

16.0 Additional Actions. By entering into this Agreement, the Department does not waive the right to take any further actions authorized by law.

17.0 Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Agreement, Respondent may, prior to expiration of the time, request an extension of the time in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due.

18.0 Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. Respondent shall comply with the new schedule, which is incorporated in this Agreement.

19.0 Cost Recovery. As provided in the CLRRRA Agreement, Respondent is liable for the Department's costs incurred in responding to the contamination at the Site (including costs of overseeing response work performed by Respondent) or costs to be incurred in the future. The Department will invoice Respondent for Department's costs on a quarterly basis.

20.0 Severability. The requirements of this Agreement are severable, and Respondent shall comply with each and every provision hereof notwithstanding the effectiveness of any other provision.

21.0 Incorporation of Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by Respondent pursuant to this Agreement are incorporated in this Agreement upon the Department's approval or as modified pursuant to Paragraph 9.0, Department Review and Approval, and shall be implemented by Respondent. Any noncompliance with the documents incorporated in this Agreement may be considered a material deviation pursuant to HSC §25395.81(c). Pursuant to §25395.81(c) and CLRRRA Agreement Docket No. **[Docket Number]**, failure to cure an unapproved material deviation within the timeframe specified in the notice may result in a loss of immunity under CLRRRA.

22.0 Modification and Termination. Respondent may, upon written request, seek modification or termination of this Agreement at any time. In addition to modification as

provided elsewhere in this Agreement, this Agreement may be modified or terminated by mutual written agreement of the parties at any time.

23.0 Time Periods. Unless otherwise specified, time periods begin from the effective date of this Agreement and "days" means calendar days.

24.0 Parties Bound. This Agreement applies to and is binding upon Respondent and its business entity successors and assigns, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement.

25.0 Effective Date. The effective date of this Agreement is the date of signature by the Department's authorized representative.

26.0 Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

27.0 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Signed on the ____ day of _____, 2006.

[Branch Chief], Chief
[Branch]
Site Mitigation Program
Department of Toxic Substances Control

I acknowledge receipt of the foregoing Agreement and consent to its terms and conditions.

[Name]
[Title]
For Respondent(s)

EXHIBIT A
SITE LOCATION AND ASSESSOR'S PARCEL MAPS

EXHIBIT B
REMEDATION SYSTEM LOCATION MAP

EXHIBIT C
OPERATION AND MAINTENANCE PLAN